



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460

OFFICE OF THE ADMINISTRATOR
EPA SCIENCE ADVISORY BOARD

February 13, 2003

MEMORANDUM

SUBJECT: US EPA Science Advisory Board (SAB) Science and Technology Review Panel (STRP) Documentation for Panel Formation Determinations

FROM: Thomas O. Miller / *Signed* /
Designated Federal Officer
Science and Technology Review Panel (1400A)

TO: Dr. Vanessa Vu
Director
Office of the Science Advisory Board (1400A)

This memorandum addresses the set of determinations that are necessary for starting a review by the SAB. It provides background information on this SAB review activity and then addresses:

- 1) the charge developed for the panel;
- 2) the type of Panel what will be used to conduct the review, the name of the Panel, and identification of the Panel Chair; the types of expertise needed to address the charge;
- 3) identification of parties who are potentially interested in or may be affected by the topic to be reviewed;
- 4) whether the charge involves a Particular Matter and how conflict of interest regulations under 18 U.S.C. 208 apply to members of the panel;
- 5) how regulations concerning appearance of lack of impartiality: under 5 C.F.R. 2635.502 apply to members of the panel;
- 6) how individuals were placed on the panel.

This memorandum serves to document the status of decisions on each of these topics and to document the OSAB Director's approval of those decisions.

A. Background

The EPA Science Advisory Board was asked by the Office of the Chief Financial Officer (OCFO) to review the FY 2004 Science and Technology President's Budget request. This review was announced in the *Federal Register* on December 31, 2002 (67 FR 79912-79914; See Attachment 1).

The Office of Research and Development (ORD) is viewed as the lead science office at EPA, however, only about half of the science conducted by the Agency is performed by ORD. Each of the Program Offices and Regions conduct scientific activities which range from risk assessments to laboratory analyses. To ensure that the science conducted at EPA is well planned, organized and coordinated, EPA has requested since the FY 1999 budget proposal, that the SAB review the entire EPA Science and Technology budget. Prior to that time the Research Strategies Advisory Committee had conducted an annual review of the Office of Research and Development's R&D budget request. This annual review helps the Agency with its science planning and in its evaluation of the effectiveness of the science budget under the Government Performance and Results Act (GPRA).

B. Determinations

1. The Charge to the Panel: A number of charge questions and continuing issues were identified for the FY 2004 process. The charge that has been negotiated between the Science Advisory Board Director and the Agency asks:

- i) Does the budget request reflect priorities identified in the EPA and ORD Strategic Plans?
- ii) Does the budget request reflect coordination between ORD and the Program Offices, including identification of the science needed to support major upcoming rules and decisions?
- iii) Does the President's Budget request provide adequate balance and attention to the core and problem driven research needed to provide satisfactory knowledge for current and future decisions EPA will be required to make?
- iv) Is the EPA research and development program addressing the important issues needed to meet EPA's strategic objectives and protect human health and the environment in the US and globally? What important issues are not receiving adequate attention at the requested level of resources provided for the R&D program and the S&T budget?
- v) How can EPA better use measures of performance that focus on environmental outcomes to identify the impact of its research and development program and the funds that Congress provides for that program?

A series of continuing issues that focus on large science and technology issues will not be an explicit part of the charge that the Panel will address. These issues include:

- i) How does EPA capture and use scientific knowledge generated by other organizations in its multi-year planning efforts for the EPA research and development program?

- ii) To what extent is there adequate peer review of the science available for policy and regulatory decisions at EPA, particularly peer review of the planning for the R and D program and of the products from the R and D program?
- iii) What is the assessment of the committee (RSAC) of the quality of the science being done at EPA, particularly that supported by the S&T budget?

Though not a part of the charge, these issues will likely provide the focus for the Panel's discussion on future science and technology reviews by the Science Advisory Board.

2. Type of Panel that will be used to conduct the review, the name of the Panel, and identification of the Panel Chair; types of expertise needed to address the charge: A Panel composed mainly of SAB members from the Research Strategies Advisory Committee was established to conduct this review. Expertise was added to this SAB Standing Committee to address areas left uncovered because of the lack of availability of two members and to address a limited number of issues not covered by the original Committee (children's health, medicine, engineering). One or more existing SAB Members who were appointed by the EPA Administrator to other SAB Standing Committees are providing this expertise. The SAB Staff Office announced the formation of the Panel in the *Federal Register* and provided biographical sketches for the Standing Committee members and other SAB Members selected to augment the Standing Committee on the SAB website. The SAB asked the public for information to help in finalizing the panel. No public comments were forthcoming as a result of the published notice.

This Panel will be known as the **Science and Technology Review Panel (STRP)**. The OSAB Director confirmed this name and CESS has entered the name in the Committee vocabulary.

The SAB Director, after discussion with the DFO about his recommendations, has determined that Dr. Genevieve Matanoski will be the **Chair for this Panel**. The rationale for selecting Dr. Matanoski as Chair of the review panel is that: she is Chair of the Research Strategies Advisory Committee, the committee that normally conducts this review; she has expertise and experience in medical, epidemiology, and risk sciences that is relevant to the topic; she has no conflict-of-interest (COI), nor appearance issues, between her financial interests and past activities and the topic under review; she is both interested in serving as Chair of the review panel and is available during the time that the review needs to be conducted; and she has demonstrated skill in chairing review panels of this type.

Based upon the charge, and after discussion with the Chair and agency representatives involved, the following **expertise should be considered** for inclusion on the panel that is to conduct this review: human health effects, medicine, exposure, ecology, economics, environmental, sensitive population groups, and social sciences.

3. Identification of parties who are potentially interested in or may be affected by the topic to be reviewed: The interested and affected parties associated with the issue include the following: EPA representatives from the Office of the Chief Financial Officer, the Office of Research and Development, the Office of Solid Waste and Emergency Response, the Office of Air and Radiation, the Office of Water, and the Office of Pesticides, Prevention, and Toxic Substances.

Members of Congress and their staff who follow the EPA budget (VA, HUD and Independent Agencies Appropriation) are potentially interested, including: the House Science Committee (Congressman Boehlert, Chair), that Committee's Subcommittee on Environment, Technology and Standards (staff contact is Mr. Marty Spitzer; Professional Staff). Another potentially interested committee is the Senate Environment and Public Works Committee. Other interested parties include: the Office of Management and Budget, the Office of Science and Technology Policy, and the Advocacy Community (e.g., People for the Ethical Treatment of Animals).

4. Does the issue to be reviewed involve a Particular Matter and how do the Conflict of Interest Regulations apply to members of the panel? Under Sec. 2640.103(1), The term **particular matter** includes only matters that involve deliberation, decision, or action that is focused upon the interests of specific persons, or a discrete and identifiable class of persons. The term may include matters which do not involve formal parties and may extend to legislation or policy making that is narrowly focused on the interests of a discrete and identifiable class of persons. It does not, however, cover consideration or adoption of broad policy options directed to the interests of a large and diverse group of persons. The particular matters covered by this part include a judicial or other proceeding, application or request for a ruling or other determination, contract, claim, controversy, charge, accusation or arrest.

In consultation with the EPA Senior Ethics Counsel, SAB Staff determined that the review of the EPA Science and Technology Budget (2004) is **not a particular matter** within the legal definition of such matters [18 U.S.C. 208(a)]. The review does involve deliberation, and the focus of the S&T budget request is on a very generally identifiable class of persons (those EPA employees who are involved with programs funded under this part of the EPA appropriation plus non-governmental employees who may be funded by programs under the S&T budget). However, the budget request involves broad options directed to highly aggregated program areas and as such would be of interest to large and diverse groups of persons. This matter does not include a judicial or other proceeding, application or request for a ruling or other determination, contract, claim, controversy, charge, accusation or arrest.

Conflict of interest is controlled under 18 U.S.C. 208(a). That section states that a Federal employee is prohibited ...from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he or any other person specified in the statute has a financial interest, if the particular matter will have a direct and predictable effect on that interest, unless permitted by 18 U.S.C. 208(b)(1) - (4).

All SAB panelists are "special government employees (SGEs)", rather than "representatives". Therefore, they are subject to the conflict-of-interest provisions of the Code of Federal Regulations. SAB panelists are expected to participate personally and substantially in reviews. However, because this review topic is not a particular matter, Conflict of Interest as defined in the statute, is not an issue. Further, the issue involves evaluating and giving advice on a budget request that has been delivered to the Congress. The advice will not change the request.

5. How regulations concerning appearance of lack of impartiality under 5 C.F.R. 2635.502 apply to members of the panel: **Appearance Issues** are discussed under Title 5, Part 2635, Subpart E of the C.F.R. addresses consideration of appearances by an employee, specifically it considers Impartiality in Performing Official Duties associated with a person's personal and business relationships. The Standards state that:

Where an employee knows that a **particular matter involving specific parties** is likely to have a direct and predictable effect on the financial interest of a member of his household, or knows that a person with whom he has a covered relationship is or represents a party to such matter, and where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate in the matter unless he has informed the agency designee of the appearance problem and received authorization from the agency designee in accordance with paragraph (d) of this section. [Particular matter involving specific parties has the meaning set forth in Sec. 2637.102(a)(7) of this chapter.]

Because this review topic is not a particular matter involving specific parties, there is no general technical Appearance issue associated with this review topic and the members of the review panel as defined by Part 2635. [See 1.c. above and email from Ken Wernick dated 12/20/02.]

Title 5, Part 2635, Subpart E of the C.F.R., discusses additional considerations in addition to those noted above. It states that

An employee who is concerned that circumstances other than those specifically described [above] ... would raise a question regarding his impartiality should use the process described in this section to determine whether he should or should not participate in a particular matter.

One member questioned whether his participation could be considered to be a conflict (real or apparent) and whether that would have implications for his organization's future relationship to EPA. Prior to completing the staff evaluation of the question, this member withdrew from the review due to a scheduling conflict that rose in association with his professional responsibilities. Thus, the question was rendered moot for him. The SAB Staff Office officials did, following a principal of openness, publish Biographical Sketches for each participant on the SAB Website. The opportunity for public comment on the panelists was announced in the Federal Register notice for this meeting (December 31, 2003, 67 FR 79912). No comments were received on any panelist. In an effort to be open to possible concerns, we have selected individuals that represent varying points of view that are relevant to the issue. Panelists have experience in academia, industry, and consultant groups. All have broad experience with environmental science issues across a breadth of disciplines.

6. How individuals were selected for the Panel: As noted above in item 2, the Panel was established around a core of SAB members of the SAB Research Strategies Advisory Committee. Expertise was added to this core of members to address areas left uncovered because of the lack of availability of two RSAC members and to address a limited number of issues not covered by the original Committee (children s health, medicine, engineering).

Existing SAB Members who were appointed by the EPA Administrator to other SAB Standing Committees are providing the additional expertise and balance for this panel. The SAB Staff Office announced the formation of the Panel, and the manner of its formation, in the *Federal Register* and provided biographical sketches for the Standing Committee members and other SAB Members selected to augment the Standing Committee on the SAB website. The SAB asked the public for information to help in finalizing the panel. No public comments were forthcoming as a result of the published notice.

Based upon availability and continued interest in this review; a panel of 11 experts was selected for the Science and Technology Review Panel.

- a. Dr. Genevieve Matanoski, Johns Hopkins School of Public Health (Chair)
- b. Dr. William Adams, Rio Tinto HSE
- c. Dr. Richard Bull, MoBull Consulting
- d. Dr. Robin Cantor, LECG, LLC
- e. Dr. Dominico Grasso, Smith College
- f. Dr. Philip Hopke, Clarkson University
- g. Dr. Hilary Inyang, University of North Carolina at Charlotte
- h. Dr. George Lambert, Robert Wood Johnson Medical School/University of Medicine and Dentistry of New Jersey
- i. Dr. Maria Morandi, University of Texas-Houston
- j. Dr. James Watson, University of North Carolina
- k. Dr. Lauren Zeise, California Environmental Protection Agency

Concurred,

/ **Signed** /

Feb 14, 03

Dr. Vanessa Vu
Director

Date